



Springs' petition challenging the Director's July 19, 2010 *Final Order* on remand in Case No. CM-DC-2010-03 before the Idaho Department of Water Resources.

2. I have been recognized as an expert witness on matters for which I intend to offer opinions in the matter of the injury to Clear Springs' water rights at its Snake River Farms facility. As a part of the proceedings involving the model calibration it was discovered in early 2009, over a year after the first administrative hearing in this case, that the calibration of the ESPA model, Version 1.1, in the Buhl to Thousand Springs reach was not performed correctly. A comparison of the model calibration data for Clear Lakes Spring to the actual spring flow diversion data indicates that the flow data for Clear Springs' diversions at the Snake River Farms facility were omitted from the model calibration dataset. This error results in only about 70 percent of the spring flow being incorporated into the model calibration dataset for the period 1980 to 2002, the same model dataset relied upon by the Director in the July 19, 2010 *Final Order* and previous orders regarding the Clear Springs call. Dr. Allan Wylie at IDWR has verified that the calibration flow target at the Clear Lakes spring complex was in error.

3. It is my understanding that IDWR has not corrected the error in the model dataset for purposes of model calibration and conjunctive administration of Clear Springs' water rights in this proceeding. Accordingly, I intend to offer fact and opinion testimony related to the accuracy of the ESPA model and the validity of the Director's continued use of the ESPA model, Version 1.1 in this manner as it pertains to Clear Springs' water rights. Given the error in the current version of the model, I further intend to provide testimony on scientific based alternatives for assessing injury to Clear Springs' water rights, including the 1955 water right, and the impacts caused by hydraulically connected junior ground water rights. These opinions would

support Clear Springs' petition regarding the hearing on the Director's July 19, 2010 *Final Order*.

4. As a part of the administrative proceedings before IDWR, the Department's personnel acknowledged that the spring flow percentage calculation used to estimate spring discharge in the various river reaches wasn't scientifically rigorous nor supported by the Department's own technical section. As part of the current administrative case before IDWR, I intend to offer opinions on scientific based alternatives that have been developed to estimate the impacts of ground water pumping on spring discharges, including the scientific basis and validity of such alternatives.

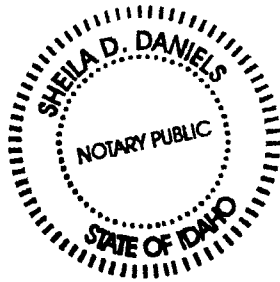
5. At the conclusion of the prior administrative proceeding the Hearing Officer questioned the scientific support for the use of a "trim line" and suggested that model uncertainty be addressed by IDWR. In response, former Director Tuthill requested that members of the Eastern Snake Plain Aquifer Modeling Committee ("Committee") submit comments on the "trim line" as it relates to model uncertainty. *See Tuthill February 25, 2009 Letter to ESHMC (Attachment A to Exhibit B to Farris Affidavit)*. I participated in drafting a white paper along with other members of the Committee that sets forth opinions addressing the hearing officer's directive and former Director Tuthill's request. *See Ex. B to Farris Affidavit*. The opinions offered in that document are opinions which I would intend to offer in the current administrative case regarding injury to Clear Springs' 1955 priority water right and the validity of the Director's July 19, 2010 *Final Order*. This is the first opportunity to provide testimony as to the matters identified in the document.

DATED this 27<sup>th</sup> day of October, 2010

Charles E. Brockway  
Charles E. Brockway, Ph.D.

SUBSCRIBED AND SWORN TO before me this 27<sup>th</sup> day of October, 2010.

Sheila D. Daniels  
NOTARY PUBLIC FOR IDAHO  
Residing at Kimberly, Idaho  
My Commission Expires Aug. 6, 2013



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 27<sup>th</sup> of October, 2010, I served a true and correct copy of the foregoing **AFFIDAVIT OF CHARLES E. BROCKWAY IN SUPPORT OF APPLICATION FOR PEREMPTORY WRIT OF MANDATE** upon the following by U.S. Mail, postage prepaid, and electronic mail:

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